IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2006-0152
Appellee,	)	2 CA-CR 2006-0153
	)	(Consolidated)
v.	)	DEPARTMENT A
	)	
JEREMY D. HICKLE,	)	MEMORANDUM DECISION
	)	Not for Publication
Appellant.	)	Rule 111, Rules of
	)	the Supreme Court

APPEALS FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause Nos. CR200201390 and CR200300472

Honorable David M. Roer, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Kathryn A. Damstra — Tucson
Attorneys for Appellee

Richard Scherb — Florence
Attorney for Appellant

H O W A R D, Presiding Judge.

¶1 Jeremy Hickle appeals the trial court's April 2006 revocation of his probation. After pleading guilty, Hickle was convicted of theft and aggravated assault, each charged in

separate indictments.[1] On each conviction, the court suspended imposition of sentence and placed Hickle on concurrent terms of supervised probation, the longest of which was five years.

¶2 In January 2006, the state filed petitions to revoke Hickle's probation in both cases on grounds that he had committed offenses of criminal damage to property, assault, and disorderly conduct; had failed to make payments ordered by the court; and, in one petition, that he had failed to attend and participate in General Equivalency Diploma (GED) classes. After a revocation hearing on both petitions, the court found all but the assault allegation had been established by a preponderance of the evidence. The court revoked Hickle's probation and sentenced him to 2.5 years' imprisonment for the theft conviction and 3.5 years' imprisonment for the aggravated assault conviction, presumptive terms to be served concurrently.[2]

¶3 Hickle argues the court abused its discretion by permitting statements of witnesses Susan Cooper and Melissa Beeman to be introduced into evidence at the revocation hearing through the testimony of Apache Junction police detective Joel Christian Ensley. Hickle asserts that these statements were unreliable because "no effort had been made to secure [the witnesses'] attendance at the hearing." Hickle also maintains the court abused its discretion by allowing Pinal County adult probation officer Lori Hoyt to testify

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[1]Hickel was convicted of theft in Pinal County cause number CR200201390 and was convicted of assault in Pinal County cause number CR200300472.

[2]We have consolidated the appeals from the court's orders in these two cases.

that there was no evidence Hickle had attended GED classes as required and that he had failed to stay current with court ordered payments. Hickle argues this testimony was unreliable because Hoyt had not spoken to him about these violations.

¶4 We will not disturb a trial court's decision to admit or exclude evidence in a probation violation hearing absent a clear abuse of discretion. *State v. Tulipane*, 122 Ariz. 557, 558, 596 P.2d 695, 696 (1979). However, because Hickle did not raise these objections at the violation hearing, he has forfeited his right to appellate relief unless he can establish that admission of this testimony was not only error, but fundamental, prejudicial error.[3] *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005); *see also State v. Stotts*, 144 Ariz. 72, 82, 695 P.2d 1110, 1120 (1985) ("When the reliability of such hearsay evidence goes unchallenged at a probation revocation hearing, the evidence is normally considered reliable."). We find no error, much less fundamental error, and affirm.

¶5 In a probation violation hearing, "[t]he court may receive any reliable evidence not legally privileged, including hearsay." Ariz. R. Crim. P. 27.8(b)(3), 17 A.R.S. Thus, the "[u]se of hearsay in probation revocation hearings . . . is not limited to traditionally

[3]Although Hickle objected to "unreliable hearsay" when Ensley testified without properly ascribing observations to Cooper and Beeman, he appears to have been objecting to a lack of foundation. Once foundation had been laid, Hickle did not renew his objection and did not object when the statements of these witnesses were offered through Ensley's testimony. Thus, he did not preserve for review the issue of whether these statements were reliable. *See, e.g., State v. Hamilton*, 177 Ariz. 403, 408, 868 P.2d 986, 991 (App. 1993) ("A party must make a specific and timely objection . . . to the admission of certain evidence in order to preserve that issue for appeal.").

recognized hearsay exceptions." *Stotts*, 144 Ariz. at 82, 695 P.2d at 1120; *see also* Ariz. R. Evid. 802, 17A A.R.S. ("Hearsay is not admissible *except as provided by applicable . . . rules*.") (emphasis added). Instead, to determine the reliability of an out-of-court statement, a court must consider "whether the circumstances surrounding the statement provide a reasonable assurance of credibility." *State v. Portis*, 187 Ariz. 336, 339, 929 P.2d 687, 690 (App. 1996). "Relevant factors include the identity of the out-of-court speaker and the level of that speaker on the hearsay ladder." *Id*. Hickle cites no authority for his suggestion that the state was required to establish that Cooper and Beeman were unavailable in order for their statements to be considered reliable, and we will not impose such a requirement.

¶6 On this record, the trial court did not abuse its discretion in permitting Ensley to testify about statements Cooper and Beeman had made to him during police interviews. According to Ensley, both women had described how Hickle, while leaving the parking lot of the building where both women worked, had backed his car up very close to Cooper's office window and then "accelerated very rapidly, which caused the tires to kick up rock and dirt that struck the window and cracked it." Ensley had also personally seen and photographed the cracked window. The trustworthiness of this hearsay evidence was supported by the known identity of these two witnesses, the similarity of their statements, and Ensley's own observation of physical evidence that was consistent with their allegations. *Cf. Portis*, 187 Ariz. at 339, 929 P.2d at 690 (hearsay regarding urinalysis results not

reliable where "assertions originated with a nameless recovering drug addict and ended two hearsay levels later via the telephone").

¶7 We also find no abuse of discretion in the admission of Hoyt's testimony that Hickle's probation file contained no evidence of his attendance at GED classes and that, as a matter of business practice, any such attendance would have been noted in his probation file. *Cf.* Ariz. R. Evid. 803(7), 17A A.R.S. (absence of record kept in the ordinary course of business offered to prove nonoccurrence of event as exception to hearsay). Nor did the court err in admitting Hoyt's testimony that Hickle's ordered payments to the court were overdue in the amounts of $1,171 for his theft conviction and $1,225 for his aggravated assault conviction, based on receipts from the Pinal County Superior Court and Hoyt's testimony that such receipts are regularly relied upon by the adult probation department. *Cf.* Ariz. R. Evid. 803(6), 17A A.R.S. (business record as exception to hearsay). Contrary to Hickle's assertion on appeal, the state was not required to establish that Hoyt had personally spoken to Hickle in order for her testimony to have been deemed reliable.

¶8 We find no fundamental error or even abuse of discretion in the trial court's admission of evidence. Accordingly, we affirm the trial court's order finding Hickle violated the conditions of his probation and sentencing Hickle to presumptive, concurrent terms of imprisonment.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

GARYE L. VÁSQUEZ, Judge